

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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US DISTRICT COURT E.D.N.Y.

★ DEC 11 2019 ★



-----X
JOHN G. DAVIS,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.
-----X

BROOKLYN OFFICE

DECISION & ORDER

18-CV-1108 (WFK)

WILLIAM F. KUNTZ II, United States District Judge:

John G. Davis ("Plaintiff"), proceeding *pro se*, filed this social security action on February 20, 2018. Pursuant to this Court's order, Defendant served its motion to dismiss the Complaint on Plaintiff on October 22, 2019. *See* ECF No. 13. Plaintiff requested additional time to file his response to the motion, which the Court granted, and his response was due June 7, 2019. *See* ECF Nos. 15-16, 18. On June 28, 2019, Defendant requested the Court consider the motion fully briefed without any reply papers because Defendant never received opposition papers from Plaintiff. *See* ECF No. 19. The Court granted Defendant's request the same day. On July 2, 2019, Defendant filed its motion to dismiss the Complaint and memorandum in support. *See* ECF No. 20; 20-1.

On August 12, 2019, this Court issued an order directing Plaintiff to file his response or to show cause by September 27, 2019 why Defendant's motion should not be granted, and his case dismissed. On September 25, 2019, Plaintiff issued the following letter to the Court:

I am answering defendant's motion to dismiss your Honor. I went to an agency that could help me with legally defense so at this time I do not want to dismiss my case against Social Security at this time. I will inform you of the law firm that will represent me in this matter.

ECF No. 24. To date, no counsel has filed a notice of appearance, and the Court has not received any further communication from Plaintiff.

Rule 41(b) of the Federal Rules of Civil Procedure provide, in relevant part, “[f]or failure of the plaintiff to prosecute or to comply with . . . any order of the court, a defendant may move for dismissal of an action or any claim against the defendant.” A district court has the inherent power to dismiss a case with prejudice for lack of prosecution pursuant to Rule 41(b). *See Link v. Wabash R.R. Co.*, 360 U.S. 626, 629 (1962). By failing to respond in substance to Defendant’s motion and to comply with this Court’s order directing him to explain why his complaint should be not dismissed, Plaintiff has failed to pursue his claim. Therefore, the Court concludes Plaintiff’s noncompliance warrants dismissal, and that such dismissal be without prejudice given Plaintiff’s *pro se* status.

For the foregoing reasons, the above-captioned action is hereby DISMISSED without prejudice for failure to prosecute pursuant to Rule 41(b). The Clerk of Court is directed to close this case.

SO ORDERED.

s/WFK


HON. WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

Dated: December 10, 2019
Brooklyn, New York